

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION

GARY M. HERRMANN

PLAINTIFF

v.

CIVIL NO. 04-5120

JO ANNE B. BARNHART, Commissioner  
Social Security Administration

DEFENDANT

**JUDGMENT**

Now on this 29 day of August 2005, comes on for consideration the Report and Recommendation dated August 9<sup>th</sup>, 2005, by the Honorable Beverly Stites Jones, United States Magistrate Judge for the Western District of Arkansas. Ten (10) days have passed without objections being filed by the parties. The Court has reviewed this case, and being well and sufficiently advised, finds that the Report and Recommendation is proper and should be adopted in its entirety. Accordingly, the Court hereby adopts the Report and Recommendation, reverses the decision of the Commissioner, and remands this case to the Commissioner for further consideration pursuant to sentence four of 42 U.S.C. § 405(g).

If plaintiff wishes to request an award of attorney's fees and cost under the Equal Access to Justice Act (EAJA) 28 U.S.C. § 2412, an application may be filed up until 30 days after the judgment becomes "not appealable" i.e., 30 days after the 60-day time for appeal has ended. *See Shalala v. Schaefer*, 509 U.S. 292, 296, 113 S.Ct. 2625 (1993); 28 U.S.C. §§ 2412(d)(1)(B), (d)(2)(G).

IT IS SO ORDERED.  
WESTERN DISTRICT OF ARKANSAS  
FILED

AUG 29 2005

CHRIS R. JOHNSON, CLERK

BY

*[Signature]*  
DEPUTY CLERK

HON. JIMM LARRY HENDREN  
UNITED STATES DISTRICT JUDGE

This document entered on docket in  
compliance with Rule 30 and 70 (a),  
FRCP.

on 8-29-05 by JA